

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

JULIO COLON,
Plaintiff,

v.

BAYVIEW LOAN SERVICING, LLC,
FEDERAL HOME LOAN MORTGAGE
CORPORATION, AND FEDERAL
HOUSING FINANCE AGENCY,
Defendants.

Civil Action No. 1:19-cv-00517-WES-PAS

**DEFENDANT BAYVIEW LOAN SERVICING, LLC'S REPLY
TO PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS**

I. INTRODUCTION

Plaintiff, Julio Colon ("Plaintiff" or "Colon"), fails to address the grounds for dismissal raised by Defendants Federal Home Loan Mortgage Corporation ("Freddie Mac") and Federal Housing Finance Agency ("FHFA," together with Freddie Mac, the "Defendants"), and Bayview Loan Servicing, LLC ("Bayview") — namely, that judicial estoppel bars him from pursuing a challenge to the foreclosure of property he surrendered in a prior bankruptcy petition. Plaintiff has no response to the Defendants' and Bayview's argument that he obtained a discharge of all debts, including the debt secured by the mortgage at issue in this case, by agreeing to and accepting the foreclosure. Also, Plaintiff has no response to Bayview's arguments that no contractual agreement exists between Plaintiff and Bayview, and that Plaintiff has not served Bayview with the Complaint. Instead, Plaintiff claims non-compliance with Paragraph 22 of his mortgage without any factual allegations or basis to challenge a strictly compliant Notice of Default issued prior to foreclosure. The

notice sent to the Plaintiff—on review of the face alone—demonstrates the absence of legal grounds to pursue a complaint challenging foreclosure.

II. LEGAL ARGUMENT

Pursuant to Fed. R. Civ. P. 10(c), Bayview hereby adopts by reference the statements and arguments set forth in the *Memorandum of Law in Support of Defendant Federal Housing Finance Agency and Federal Home Loan Mortgage Corporation's Motion to Dismiss* (ECF No. 6), *Memorandum of Law in Support of Defendant Bayview Loan Servicing, LLC's Motion to Dismiss* (ECF No. 9), and *Defendants' Reply to Plaintiff's Opposition to Motion to Dismiss* (ECF No. 22), and hereby adopts by reference any exhibits attached to those papers.¹

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¹ Upon information and belief, as of April 14, 2020, Plaintiff has still not served the Complaint on Bayview. Bayview continues to assert that the Complaint deserves dismissal, pursuant to Fed. R. Civ. P. 12(b)(4) and 12(b)(5), for insufficiency of process and insufficiency of service of process. Notwithstanding these grounds for dismissal, Bayview relies in the first instance on its substantive arguments for dismissal, and in the second instance on its procedural arguments for dismissal.

III. CONCLUSION

For the foregoing reasons, and substantially for those stated in its *Motion to Dismiss* and the *Motion to Dismiss of Federal Housing Finance Agency and Federal Home Loan Mortgage Corporation*, Bayview Loan Servicing, LLC requests that this Court allow its motion seeking the dismissal of Julio Colon's complaint.

Respectfully submitted,

DEFENDANT,
BAYVIEW LOAN SERVICING, LLC,
By their attorneys,

/s/ Patrick Dowling, Jr.

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DATED: April 15, 2020

CERTIFICATION OF SERVICE

I hereby certify that on the 15th day of April 2020, I caused a true and correct copy of the within document to be e-filed with the District Court of Rhode Island and caused a true and correct copy of this document to be served through the electronic filing system on the following parties:

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This document electronically filed and served is available for viewing and/or downloading from the District Court of Rhode Island's Electronic Filing System.

/s/ Patrick Dowling, Jr.
Michienzie & Sawin, LLC